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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions

Report of the Secretary-General

Summary

The present report is submitted in compliance with paragraph 17 of General Assembly resolution 69/122. It highlights arrangements in the Secretariat related to assistance to third States affected by the application of sanctions, the operational changes that have occurred in the light of the shift in focus in the Security Council and its sanctions committees towards targeted sanctions and recent developments concerning the activities of the Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions.

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I. Introduction

1. In its resolution 69/122, the General Assembly requested the Secretary-General to submit a report to the Assembly at its seventieth session on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions. The present report has been prepared in compliance with that request.

II. Measures for further improvement of the procedures and working methods of the Security Council and its sanctions committees related to assistance to third States affected by the application of sanctions

2. As noted in previous reports of the Secretary-General (A/62/206 and Corr.1, A/63/224, A/64/225, A/65/217, A/66/213, A/67/190, A/68/226 and A/69/119), several of the recommendations and best practices set out in the report of the Security Council Informal Working Group on General Issues of Sanctions (S/2006/997, annex) related to improved sanctions design and monitoring; however, the report did not contain any recommendations that explicitly referred to ways to assist third States affected by the unintended impact of sanctions. By its resolution 1732 (2006), the Security Council decided that the Working Group had fulfilled its mandate as set out in the note by the President of the Council of 29 December (S/2005/841), took note with interest of the best practices and methods set out in the report of the Working Group and requested its subsidiary bodies to take note of them also.

3. During the period under review, and in keeping with the shift of the Security Council from comprehensive economic sanctions to targeted sanctions, there were no pre-assessment reports or ongoing assessment reports concerning the likely or actual unintended impact of sanctions on third States.

4. Concerning the sanctions regimes currently in existence, in nearly every case in which the Security Council has decided that States shall freeze the assets owned or controlled by designated individuals and entities, the Council has also adopted exceptions by which States can signal to the relevant sanctions committee their intention to authorize access to frozen funds for a variety of basic and extraordinary expenses.[1] Such expenses can include tax payments, insurance premiums and public utility charges; reasonable professional fees and reimbursement of expenses associated with the provision of legal services; and fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

5. Furthermore, in recent years, whenever the Council has imposed an assets freeze it has also consistently provided that the measure would not prevent a designated person or entity from making payments due under a contract entered into prior to the listing of such a person or entity, provided that certain conditions had

[1] See Security Council resolutions 1452 (2002) (as amended by resolution 1735 (2006)), 1532 (2004), 1572 (2004), 1591 (2005), 1596 (2005), 1636 (2005), 1718 (2006), 1737 (2006), 1844 (2008), 1907 (2009), 1970 (2011) (as updated by resolution 2009 (2011)), 2134 (2014), 2140 (2014) and 2206 (2015).

been met, and after notification by the relevant States to the relevant sanctions committee of the intention to make or receive such payments or to authorize, where appropriate, the unfreezing of funds, other financial assets or economic resources for that purpose, 10 working days prior to such authorization.[2]

6. To date, through his 90-day reports to the Security Council, the Chair of the Committee established pursuant to resolution 1737 (2006) has informed the Council of a total of 68 such notifications received.[3] Similarly, in periodic reports to the Council, the Chair of the Committee established pursuant to resolution 1970 (2011) informed the Council of a total of 46 notifications received.[4]

7. In addition, also in connection with the assets freeze measure, in certain cases the Security Council has aimed to ensure that persons or entities, including in third States, are not held responsible for failure to comply with a contractual or other obligation when such failure is due to measures imposed by the Council in its resolutions.[5]

8. Increasingly in 2014 and 2015, sanctions committees have organized meetings with regional States in order to initiate or strengthen dialogue with them, including for the purpose of discussing any implementation challenges they might be facing. Six committees have held 10 such meetings.[6] Open briefings by the chairs of the committees, of which there have been four since 2014, also provide a forum to hear from Member States about their concerns and challenges.[7] No committee has received a formal request for assistance, in 2014 or 2015, from a third State affected by the application of sanctions.

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[2] See paragraph 15 of resolution 1737 (2006), paragraph 21 of resolution 1970 (2011), paragraph 34 of resolution 2134 (2014), paragraph 14 of resolution 2140 (2014), paragraph 10 of resolution 2196 (2015) and paragraph 15 of resolution 2206 (2015).

[3] See S/PV.5702, S/PV.5743, S/PV.5807, S/PV.5853, S/PV.5909, S/PV.5973, S/PV.6142, S/PV.6235, S/PV.6280, S/PV.6384, S/PV.6442, S/PV.6502, S/PV.6563, S/PV.6607, S/PV.6697, S/PV.6737, S/PV.6786, S/PV.6888, S/PV.6930, S/PV.6999, S/PV.7082, S/PV.7146, S/PV.7350 and S/PV.7412. The 90-day report of 9 September 2009, which is also relevant, was not delivered at a public meeting; the text is available, however, from the Committee's website: http://www.un.org/sc/committees/1737/pdf/90day.pdf.

[4] See S/PV.6566, S/PV.6622, S/PV.6698, S/PV.6857, S/PV.6934, S/PV.6981, S/PV.7031, S/PV.7075, S/PV.7130, S/PV.7194 and S/PV.7398. The periodic report of 8 November 2012 was not delivered in its entirety at the public meeting; the full text is available, however, from the Committee's website: http://www.un.org/sc/committees/1970/pdf/chairman-november2012.pdf.

[5] See paragraph 17 of resolution 1803 (2008), paragraph 27 of resolution 1973 (2011), paragraph 13 of resolution 2087 (2013) and paragraph 18 of resolution 2182 (2014).

[6] The Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, the Committee established pursuant to resolution 1591 (2005) concerning the Sudan (two meetings), the Committee established pursuant to resolution 1970 (2011) concerning Libya, the Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic (three meetings), the Committee established pursuant to resolution 2140 (2014) (two meetings) and the Committee established pursuant to resolution 2206 (2015) concerning South Sudan.

[7] Held by the Chairs of the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, the Committee established pursuant to resolution 1718 (2006) concerning the Democratic People's Republic of Korea and the Committee established pursuant to resolution 2127 (2013) concerning the Central African Republic (two briefings).

III. Recent developments related to the role of the General Assembly and the Economic and Social Council in the area of assistance to third States affected by the application of sanctions

9. In its resolution 59/45, the General Assembly reaffirmed the important roles of the Assembly and the Economic and Social Council in the area of assistance to third States confronted with special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council. Should consultations be requested by those States, the Assembly and the Economic and Social Council will mobilize and monitor, as appropriate, the economic assistance efforts of the international community and the United Nations system on behalf of third States affected by sanctions.

A. General Assembly

10. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization met from 17 to 25 February 2015. The report of the Special Committee contains a summary of the discussions on the question of the implementation of the Charter provisions related to assistance to third States affected by sanctions (see A/70/33, chap. II (A)).

B. Economic and Social Council

11. The Economic and Social Council approved its programme of work (see E/2015/1) and decided to include in the agenda of the coordination and management meeting a sub-item, 18 (m), entitled "Assistance to third States affected by the application of sanctions". No advance documentation was requested. The Council considered the matter on 9 June 2015 but took no action under that sub-item.

IV. Arrangements in the Secretariat related to assistance to third States affected by the application of sanctions

12. In accordance with the relevant resolutions of the General Assembly,[8] the competent units within the Secretariat have maintained their capacity to monitor information pertaining to any special economic problems in third States arising from the application of preventive or enforcement measures imposed by the Security Council, to evaluate any appeals to the Security Council made by such affected third States under the provisions of Article 50 of the Charter of the United Nations and to identify solutions to the special economic problems of those States.

13. As noted in previous reports,[9] sanctions by the Security Council that are currently in effect are all targeted in nature, and the need to explore practical and

[8] See resolutions 50/51, 51/208, 52/162, 53/107, 54/107, 55/157, 56/87, 57/25, 58/80, 59/45, 60/23, 61/38, 62/69, 63/127, 64/115, 65/31, 66/101, 67/96, 68/115 and 69/122.

[9] See A/62/206 and Corr.1, A/63/224, A/64/225, A/65/217, A/66/213, A/67/190, A/68/226 and A/69/119.

effective measures of assistance to third States affected by sanctions has been reduced considerably because the shift from comprehensive to targeted sanctions has led to significant reductions in unintended adverse impacts on third States. In fact, no official appeals by third States to monitor or evaluate unintended adverse impacts on non-targeted countries have been conveyed to the Department of Economic and Social Affairs of the Secretariat since 2003.

14. The shift to targeted sanctions has implied corresponding changes in the methodological approaches used to assess the impacts of sanctions on third States. Detailed case-by-case assessments of the possible adverse impact on individual countries, including both targeted and non-targeted countries, would be required. The impact of sanctions would need to be evaluated against a baseline drawn from recent historical trends in economic and social conditions in the countries or region. Some of the technical methods used to review and assess special economic problems of third States affected by sanctions were discussed in detail in the report of the Informal Working Group on General Issues of Sanctions, the Sanctions Assessment Handbook[10] and the Field Guidelines for Assessing the Humanitarian Implications of Sanctions[11] published by the Inter-Agency Standing Committee.

15. The Department of Economic and Social Affairs has continued to explore remedial assistance to affected third States. Pursuant to General Assembly resolution 52/162, the Department convened in 1998 an ad hoc expert group meeting to implement tasks to coordinate information about international assistance available to third States and to explore innovative and practical measures of assistance to the affected third States. Main findings and suggestions are available in the report of the Secretary-General (A/53/312) and in background papers prepared for the meeting. It is difficult to update the information on assistance measures in general, as the nature of targeted sanctions and their likely impact, particularly the unintended economic consequences for third States, will vary from country to country.

16. According to the present Secretariat arrangement, the Department of Political Affairs, in consultation with the Department of Economic and Social Affairs, and at the request of the Security Council and its organs, is to assess the effects of sanctions regimes on third States and provide advice to the Security Council and its organs on the specific needs or problems of those third States (see A/57/165, para. 9). As mentioned above, however, there have been no requests by the Security Council or its organs for the Department of Economic and Social Affairs to monitor or evaluate specific cases of third States affected by sanctions.

17. The Department of Economic and Social Affairs will continue to seek opportunities for collaborative work with other relevant parts of the Secretariat, international organizations and academic institutions, with a view to keeping abreast of similar and related methodologies and to improving the sanctions monitoring framework and sanction assessment methodology, through closer collaboration with other units in the Secretariat and intergovernmental bodies engaged in the design of targeted sanctions and the evaluation of their implementation and effectiveness. A change in the present Secretariat arrangement, however, would require revised legislative authorization and adequate budgetary resources.

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[10] Available from http://www.humanitarianinfo.org/iasc/downloaddoc.aspx?docID=4423&type=pdf.

[11] Available from http://www.humanitarianinfo.org/iasc/downloaddoc.aspx?docID=4424&type=pdf.